

§ 128.14 Confidentiality of proceedings.

Proceedings under this part are confidential. The documents referred to in § 128.17 are not, however, deemed to be confidential. Reports of the Administrative Law Judge and copies of transcripts or recordings of hearings will be available to parties and, to the extent of their own testimony, to witnesses. All records are available to any U.S. Government agency showing a proper interest therein.

[61 FR 48834, Sept. 17, 1996]

§ 128.15 Orders containing probationary periods.

(a) *Revocation of probationary periods.* A debarment or interim suspension order may set a probationary period during which the order may be held in abeyance for all or part of the debarment or suspension period, subject to the conditions stated therein. The Director, Office of Defense Trade Controls, may apply without notice to any person to be affected thereby, to the Administrative Law Judge for an order revoking probation when it appears that the conditions of the probation have been breached. The facts in support of the application will be presented to the Administrative Law Judge, who will report thereon and make a recommendation to the Assistant Secretary for Political-Military Affairs. The latter will make a determination whether to revoke probation and will issue an appropriate order.

(b) *Hearings—(1) Objections upon notice.* Any person affected by an application upon notice to revoke probation, within the time specified in the notice, may file objections with the Administrative Law Judge.

(2) *Objections to order without notice.* Any person adversely affected by an order revoking probation, without notice may request that the order be set aside by filing his objections thereto with the Administrative Law Judge. The request will not stay the effective date of the order or revocation.

(3) *Requirements for filing objections.* Objections filed with the Administrative Law Judge must be submitted in writing and in duplicate. A copy must be simultaneously submitted to the Of-

fice of Defense Trade Controls. Denials and admissions, as well as any mitigating circumstances, which the person affected intends to present must be set forth in or accompany the letter of objection and must be supported by evidence. A request for an oral hearing may be made at the time of filing objections.

(4) *Determination.* The application and objections thereto will be referred to the Administrative Law Judge. An oral hearing if requested, will be conducted at an early convenient date, unless the objections filed raise no issues of material fact to be determined. The Administrative Law Judge will report the facts and make a recommendation to the Assistant Secretary for Political-Military Affairs, who will determine whether the application should be granted or denied and will issue an appropriate order. A copy of the order and of the Administrative Law Judge's report will be furnished to any person affected thereby.

(5) *Effect of revocation on other actions.* The revocation of a probationary period will not preclude any other action concerning a further violation, even where revocation is based on the further violation.

[61 FR 48834, Sept. 17, 1996]

§ 128.16 Extension of time.

The Administrative Law Judge, for good cause shown, may extend the time within which to prepare and submit an answer to a charging letter or to perform any other act required by this part.

[61 FR 48834, Sept. 17, 1996]

§ 128.17 Availability of orders.

All charging letters, debarment orders, orders imposing civil penalties, probationary periods, and interim suspension orders are available for public inspection in the Public Reading Room of the Department of State.

PART 129—REGISTRATION AND LICENSING OF BROKERS

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AUTHORITY: Sec. 38, Pub. L. 104-164, 110 Stat. 1437, (22 U.S.C. 2778).

SOURCE: 62 FR 67276, Dec. 24, 1997, unless otherwise noted.

§ 129.1 Purpose.

Section 38(b)(1)(A)(ii) of the Arms Export Control Act (22 U.S.C. 2778) provides that persons engaged in the business of brokering activities shall register and pay a registration fee as prescribed in regulations, and that no person may engage in the business of brokering activities without a license issued in accordance with the Act.

§ 129.2 Definitions.

(a) *Broker* means any person who acts as an agent for others in negotiating or arranging contracts, purchases, sales or transfers of defense articles or defense services in return for a fee, commission, or other consideration.

(b) *Brokering activities* means acting as a broker as defined in §129.2(a), and includes the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service, irrespective of its origin. For example, this includes, but is not limited to, activities by U.S. persons who are located inside or outside of the United States or foreign persons subject to U.S. jurisdiction involving defense articles or defense services of U.S. or foreign origin which are located inside or outside of the United States. But, this does not include activities by U.S. persons that are limited exclusively to U.S. domestic sales or transfers (e.g., not for export or re-transfer in the United States or a foreign person).

(c) The term “foreign defense article or defense service” includes any non-United States defense article or defense service of a nature described on the United States Munitions List regardless of whether such article or service is of United States origin or

whether such article or service contains United States origin components.

§ 129.3 Requirement to Register.

(a) Any U.S. person, wherever located, and any foreign person located in the United States or otherwise subject to the jurisdiction of the United States (notwithstanding §120.1(c)), who engages in the business of brokering activities (as defined in this part) with respect to the manufacture, export, import, or transfer of any defense article or defense service subject to the controls of this subchapter (see §121) or any “foreign defense article or defense service” (as defined in §129.2) is required to register with the Office of Defense Trade Controls.

(b) *Exemptions.* Registration under this section is not required for:

(1) Employees of the United States Government acting in official capacity.

(2) Employees of foreign governments or international organizations acting in official capacity.

(3) *Persons exclusively in the business of financing, transporting, or freight forwarding, whose business activities do not also include brokering defense articles or defense services.* For example, air carriers and freight forwarders who merely transport or arrange transportation for licensed United States Munitions List items are not required to register, nor are banks or credit companies who merely provide commercially available lines or letters of credit to persons registered in accordance with Part 122 of this subchapter required to register. However, banks, firms, or other persons providing financing for defense articles or defense services would be required to register under certain circumstances, such as where the bank or its employees are directly involved in arranging arms deals as defined in §129.2(a) or hold title to defense articles, even when no physical custody of defense articles is involved.

§ 129.4 Registration statement and fees.

(a) *General.* The Department of State Form DSP-9 (Registration Statement) and a transmittal letter meeting the requirements of §122.2(b) of this subchapter must be submitted by an intended registrant with a payment by

check or money order payable to the Department of State of one of the fees prescribed in §122.3(a) of this subchapter. The Registration Statement and transmittal letter must be signed by a senior officer who has been empowered by the intended registrant to sign such documents. The intended registrant shall also submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States.

(b) A person required to register under this part who is already registered as a manufacturer or exporter in accordance with part 122 of this subchapter must also provide notification of this additional activity by submitting to the Office of Defense Trade Controls by registered mail a transmittal letter meeting the requirements of §122.2(b) and citing the existing registration, and must pay an additional fee according to the schedule prescribed in §122.3(a). Any person who registers coincidentally as a broker as defined in §129.2 of this subchapter and as a manufacturer or exporter must submit a Registration Statement that reflects the brokering activities, the §122.2(b) transmittal letter, as well as the additional fee for registration as a broker.

(c) Other provisions of part 122, in particular, §122.4 concerning notification of changes in information furnished by registrants and §122.5 concerning maintenance of records by registrants, apply equally to registration under this part (part 129).

§ 129.5 Policy on embargoes and other proscriptions.

(a) The policy and procedures set forth in this subparagraph apply to brokering activities defined in §129.2 of this subchapter, regardless of whether the persons involved in such activities have registered or are required to register under §129.3 of this subchapter.

(b) No brokering activities or brokering proposals involving any country referred to in §126.1 of this subchapter may be carried out by any person without first obtaining the written approval of the Office of Defense Trade Controls.

(c) No brokering activities or proposal to engage in brokering activities

may be carried out or pursued by any person without the prior written approval of the Office of Defense Trade Controls in the case of other countries or persons identified from time to time by the Department of State through notice in the FEDERAL REGISTER, with respect to which certain limitations on defense articles or defense services are imposed for reasons of U.S. national security or foreign policy (e.g., Cyprus, Guatemala, Yemen) or law enforcement interests (e.g., an individual subject to debarment pursuant to §127.7 of this subchapter).

(d) No brokering activities or brokering proposal may be carried out with respect to countries which are subject to United Nations Security Council arms embargo (see also §121.1(c)).

(e) In cases involving countries or persons subject to paragraph (b), (c), or (d), above, it is the policy of the Department of State to deny requests for approval, and exceptions may be granted only rarely, if ever. Any person who knows or has reason to know of brokering activities involving such countries or persons must immediately inform the Office of Defense Trade Controls.

§ 129.6 Requirement for License/Approval.

(a) No person may engage in the business of brokering activities without the prior written approval (license) of, or prior notification to, the Office of Defense Trade Controls, except as follows:

(b) A license will not be required for:

(1) Brokering activities undertaken by or for an agency of the United States Government—

(i) For use by an agency of the United States Government; or

(ii) For carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

(2) Brokering activities that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, any member country of that Organization, Japan, Australia, or New Zealand, except in the case of the defense articles or defense services specified in §129.7(a) of this subchapter,

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for which prior approval is always required.

§ 129.7 Prior Approval (License).

(a) The following brokering activities require the prior written approval of the Office of Defense Trade Controls:

(1) Brokering activities pertaining to certain defense articles (or associated defense services) covered by or of a nature described by Part 121, to or from any country, as follows:

(i) Fully automatic firearms and components and parts therefor;

(ii) Nuclear weapons strategic delivery systems and all components, parts, accessories, attachments specifically designed for such systems and associated equipment;

(iii) Nuclear weapons design and test equipment of a nature described by Category XVI of Part 121;

(iv) Naval nuclear propulsion equipment of a nature described by Category VI(e);

(v) Missile Technology Control Regime Category I items (§121.16);

(vi) Classified defense articles, services and technical data;

(vii) Foreign defense articles or defense services (other than those that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, Japan, Australia, or New Zealand (see §§ 129.6(b)(2) and 129.7(a)).

(2) Brokering activities involving defense articles or defense services covered by, or of a nature described by, Part 121, in addition to those specified in §129.7(a), that are designated as significant military equipment under this subchapter, for or from any country not a member of the North Atlantic Treaty Organization, Australia, New Zealand, or Japan whenever any of the following factors are present:

(i) The value of the significant military equipment is \$1,000,000 or more;

(ii) The identical significant military equipment has not been previously licensed for export to the armed forces of the country concerned under this subchapter or approved for sale under the Foreign Military Sales Program of the Department of Defense;

(iii) Significant military equipment would be manufactured abroad as a re-

sult of the articles or services being brokered; or

(iv) The recipient or end user is not a foreign government or international organization.

(b) The requirements of this section for prior written approval are met by any of the following:

(1) A license or other written approval issued under parts 123, 124, or 125 of this subchapter for the permanent or temporary export or temporary import of the particular defense article, defense service or technical data subject to prior approval under this section, provided the names of all brokers have been identified in an attachment accompanying submission of the initial application; or

(2) A written statement from the Office of Defense Trade Controls approving the proposed activity or the making of a proposal or presentation.

(c) Requests for approval of brokering activities shall be submitted in writing to the Office of Defense Trade Controls by an empowered official of the registered broker; the letter shall also meet the requirements of §126.13 of this subchapter.

(d) The request shall identify all parties involved in the proposed transaction and their roles, as well as outline in detail the defense article and related technical data (including manufacturer, military designation and model number), quantity and value, the security classification, if any, of the articles and related technical data, the country or countries involved, and the specific end use and end user(s).

(e) The procedures outlined in §126.8(c) through (g) are equally applicable with respect to this section.

§ 129.8 Prior Notification.

(a) Prior notification to the Office of Defense Trade Controls is required for brokering activities with respect to significant military equipment valued at less than \$1,000,000, except for sharing of basic marketing information (e.g., information that does not include performance characteristics, price and probable availability for delivery) by U.S. persons registered as exporters under Part 122.

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(b) The requirement of this section for prior notification is met by informing the Office of Defense Trade Controls by letter at least 30 days before making a brokering proposal or presentation. The Office of Defense Trade Controls will provide written acknowledgment of such prior notification to confirm compliance with this requirement and the commencement of the 30-day notification period.

(c) The procedures outlined in § 126.8(c) through (g) are equally applicable with respect to this section.

§ 129.9 Reports.

(a) Any person required to register under this part shall provide annually a report to the Office of Defense Trade Controls enumerating and describing its brokering activities by quantity, type, U.S. dollar value, and purchaser(s) and recipient(s), license(s) numbers for approved activities and any exemptions utilized for other covered activities.

§ 129.10 Guidance.

(a) Any person desiring guidance on issues related to this part, such as whether an activity is a brokering activity within the scope of this Part, or whether a prior approval or notification requirement applies, may seek guidance in writing from the Office of Defense Trade Controls. The procedures and conditions stated in § 126.9 apply equally to requests under this section.

PART 130—POLITICAL CONTRIBUTIONS, FEES AND COMMISSIONS

Sec.

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AUTHORITY: Sec. 39, Arms Export Control Act, 90 Stat. 767 (22 U.S.C. 2779); E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp. p.79; 22 U.S.C. 2658.

SOURCE: 58 FR 39323, July 22, 1993, unless otherwise noted.

§ 130.1 Purpose.

Section 39(a) of the Arms Export Control Act (22 U.S.C. 2779) provides that the Secretary of State shall prescribe regulations with respect to reporting on certain payments relating to sales of defense articles and defense services. The provisions of this part implement that requirement. Definitions which apply to this part are contained in §§ 130.2 through 130.8.

§ 130.2 Applicant.

Applicant means any person who applies to the Office of Defense Trade Controls for any license or approval required under this subchapter for the export of defense articles or defense services valued in an amount of \$500,000 or more which are being sold commercially to or for the use of the armed forces of a foreign country or international organization. This term also includes a person to whom the required license or approval has been given.

§ 130.3 Armed forces.

Armed forces means the army, navy, marine, air force, or coast guard, as well as the national guard and national police, of a foreign country. This term also includes any military unit or military personnel organized under or assigned to an international organization.

§ 130.4 Defense articles and defense services.

Defense articles and defense services have the meaning given those terms in paragraphs (3), (4) and (7) of section 47 of the Arms Export Control Act (22 U.S.C. 2794 (3), (4), and (7)). When used with reference to commercial sales, the